IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.1222 OF 2004

IN

SUIT NO.2939 OF 1999

...

M/s.Foreshore Co.operative Housing Society Ltd. ...Plaintiffs

v/s.

Shri Praveen Desai and ors. ...Defendants

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Mr.S.H.Doctor with Mr.B.B.Saraf, Mr.M.S.Doctor, Ms.Tally i/b S.Mohomedbhai & Co. for the Plaintiffs.

Mr.Ravi Kadam, Advocate General with Mr.V.B.Naik i/b M.K.Ambalal & Co. for Defendants Nos. 3 & 4.

Mr.J.Reis for Defendant No.7.

Mr.D.D.Madon with Mr.Cyrus Adreshir i/b Kanga & Co. for Defendant No.8.

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CORAM: D.K.DESHMUKH, J.

DATED: 20th January, 2006

JUDGMENT:

1. In this Notice of Motion, in view of the provisions of Section 9A of the Civil Procedure Code following two issues were framed as preliminary issues:-

(i) Does the Defendant No.8 prove that the suit as framed and filed is barred by the law of limitation?

(ii) Does the Defendant No.8 prove that the suit as framed and filed, in the absence of notice to the Corporation in terms of provisions of Section 527 of the Bombay Municipal Corporation Act, is not maintainable?

2. At the hearing the Defendant No.8 did not press issue No.2 and therefore, issue No.2 is answered accordingly.

3. The contest between the parties was only on issue No.1. The facts that are necessary and material for deciding issue No.1 are that the Plaintiff which is a Co.operative Housing Society claims that the entire land which is the subject matter of the suit was assigned to the Plaintiff/society by registered Deed of Assignment dated 25th March, 1969 by the original lessee of the land. The Plaintiff/society is the owner of the building "Advent" standing on part of the land. On other part of the land, partly constructed building "Divya Prabha" stands. The dispute in a suit relates to this incomplete building "Divya Prabha". The construction of that building was commenced by the first Defendant, who is the builder and developer, in the year 1966. The construction of the building remained incomplete. In October, 1994 the Plaintiff filed B.C.C.Suit No.6734 of 1994 in the city civil court. According to the Plaintiff, the suit was filed in the city civil court on the basis of apprehension that the Defendant No.7/ Municipal Corporation was considering the proposal

for permitting completion of the construction of the structure "Divya Prabha". According to the Plaintiff, the Plaintiff came to know only after filing civil suit in the city civil court that the Defendants Nos. 1 to 6 have entered into a contract with Defendant No.8 for transfer of right, title and interest of Defendants Nos. 1 to 6 in favour of Defendant No.8. During the pendency of the civil suit in the city civil court on 28-6-1996, the Municipal Corporation revalidated the building permission for a period of one year. The building permission was again revalidated by letter dated 18th October, 1998 again for a period of one year. Thus, the suit in the city civil court was filed by the Plaintiff mainly for a declaration that the Defendants were not entitled to avail of additional FSI and for a declaration that the revalidation of the building permission granted by the Corporation is not valid. In that suit a preliminary issue was framed as to the jurisdiction of that court to entertain the suit. By order dated 15/16th April, 1999 City Civil Court held that it did not have pecuniary jurisdiction to entertain the suit and returned the plaint to the Plaintiff for presentation to the proper court. The Plaintiff challenged that

order by filing A.O. No.400 of 1999 in this Court, but that A.O. was withdrawn by the Plaintiff on 5th May, 1999 and the present suit was filed on 18th May, 1999. In this suit, the present Notice of Motion has been taken out by the Plaintiff claiming certain interim reliefs.

4. In its reply, the Defendant No.8 has contended that the present suit is barred by the law of limitation, because the cause of action for filing the present suit arose in October, 1994. A suit for claiming the reliefs which are prayed for in the present suit could have been filed within a period of three years from accrual of the cause of action in October, 1994. The present suit which has been filed in this Court on 18th May, 1999 is thus barred by the law of limitation. In view of these pleadings the aforesaid preliminary issue was framed.

5. Parties were heard on the preliminary issue on 16th September, 2005. At that time, it was submitted by the Defendant No.8 by referring to paragraph 18 of the plaint that the cause of action for instituting the present suit arises in April, 1994 and therefore, the present suit is barred by the law of limitation.

It was also contended on behalf of the Defendant No.8 that in the plaint the Plaintiffs have not pleaded that they are entitled to exclusion of time spent in prosecuting the suit in the city civil court under Section 14 of the Limitation Act. Thereafter, the Plaintiffs took out Chamber Summons No.1335 of 2005 seeking amendments in the plaint. The Plaintiffs were permitted by the court to carry out the amendments in the plaint by order dated 8th December, 2005. By the amendments made in the plaint, the Plaintiffs now claimed that the suit in the city civil court was prosecuted with due diligence and in good faith. The Defendants have denied this statement that the suit filed by the Plaintiffs in the city civil court was prosecuted with due diligence and in good faith by the Plaintiffs. The Plaintiffs have not led any oral evidence nor has the Defendant No.8 led any oral evidence.

6. It is submitted on behalf of the Defendants, firstly, that the Plaintiffs are not entitled to claim exclusion of time spent in prosecuting the suit in city civil court, because the subject matter of the suit filed in city civil court and the subject matter of the suit filed in this court is different.

It is submitted on behalf of the Defendant No.8 that in this suit the Plaintiffs have sought a declaration that the Defendants Nos. 1 to 6 & 8 or any of them have any right, title or interest whatsoever in or over the suit property, including the land and structure thereon, more particularly described in Exh.A1 to the plaint. By prayer clause (a), the Plaintiffs seek a declaration that Defendants Nos. 1 to 6 and Defendant No.8 are not entitled to carry out any work or construction on the said structure Divya Prabha. By prayer clause (b), the Plaintiffs seek a perpetual injunction restraining the Defendant Nos.1 to 6 and Defendant No.8 from claiming any right, title or interest in respect of the suit property , more particularly described in Exh.A-1 to the plaint claiming possession for use or occupation in respect of the said structure Divya Prabha dealing with, transferring, alienating or assigning or granting third party rights or otherwise dealing with or parting with possession of the said property. By prayer clause (f) the Plaintiffs have sought a declaration that the structure Divya Prabha is incapable of being completed under the provisions of MRTP Act, Bombay Municipal Corporation Act, and the Development Control Rules 1991, and is therefore

liable to be demolished. By prayer clause (i) the Plaintiffs sought damages to the tune of Rs.4,00,00,000/- as per the particulars of claim at Exh.U from the Defendants Nos. 1 to 5 and Defendant No.8.

7. In so far as this aspect of the matter is concerned, it is submitted on behalf of the Plaintiffs that the subject matter of the suit filed in the city civil court and the present suit is the same. In both the suits, the Plaintiffs are basically challenging the alleged assignment of rights in relation to the structure Divya Prabha and the entitlement of the Defendants to carry on construction on the structure Divya Prabha. According to the Plaintiffs, while considering whether the subject matter of the suit in the city civil court and the present suit is the same, what is to be seen is the substance of the two suits.

8. Perusal of the provisions of Section 14 of the Limitation Act shows that what is required to be established by the Plaintiffs for claiming benefits of Section 14 is that the two proceedings relate to the same matter in issue. Now, comparison of the

plaint in the city civil court and the present suit shows that the matter in issue in both the suits is entitlement of the Defendants to complete the construction of the structure Divya Prabha. The Plaintiffs are challenging the entitlement of the Defendants to do so on various grounds. Even the prayer of the Plaintiffs for damages which is to be found in the present suit and which was absent in the suit filed in the city civil court also flows from the same contentions of the Plaintiffs that the Defendants have no rights to be on the property. Therefore, in my opinion, the Defendant No.8 is not justified in contending that the matter in issue in the two suits is not the same.

9. The next contention of the Defendant No.8 is that even assuming that the matter in issue in both the suits is the same in order to claim benefits of Section 14 of the Limitation Act, apart from establishing that the matter in issue in the two suits is the same, the Plaintiffs have to establish that the Plaintiffs were prosecuting in good faith the civil proceedings. In other words, according to the Defendant No.8 in order to be able to successfully claim exclusion of time spent in

prosecuting the suit in a city civil court, the Plaintiffs will have to plead and prove that the suit in the city civil court was instituted and prosecuted in good faith and with due diligence. The Defendant No.8 submits that the term "good faith" is defined by Section 2(h) of the Limitation Act and according to the provisions in order to establish that something has been done in good faith, it has to be shown that it was done with due care and due attention was bestowed. According to the Defendant No.8, in the plaint at the time when the preliminary issue was framed, no averment was even to be found claiming that the city civil court suit was instituted and prosecuted in good faith. This was pointed out by the Defendants at the hearing of the preliminary issue. Thereafter, Chamber summons was taken out for carrying out amendments in the plaint and even after the amendments all that is stated in the plaint is that the city civil court suit was prosecuted with due diligence and in good faith. No particulars of this claim have been given. It is not even claimed that the suit in city civil court was instituted after taking proper care and with due diligence. Relying on the judgment of the Supreme Court in the case of Deena v. Bharat Singh, (2002) 6 SCC 336, it

is submitted that the finding as to good faith or absence of it is a finding of fact. According to Defendant No.8, therefore, it was absolutely necessary for the Plaintiff to lead evidence to show that they had acted in good faith, i.e. with due care and attention in instituting and prosecuting the city civil court suit. Relying on the judgment of the Supreme Court in the case of Madhavrao Narayanrao Patwardhan v/s.Ram Krishna Govind Bhanu & Ors., AIR 1958 SC 767, it is submitted that the burden of **bringing the case within section 14 of the Limitation Act lies on the Plaintiff and when the Plaintiff does not satisfy the initial burden, the burden does not shift to the Defendant. It is contended that the Plaintiffs were required to plead and prove that they had prosecuted the earlier suit diligently and in good faith. The Plaintiffs having failed to lead any evidence, have not proved that they had instituted and prosecuted the earlier suit in good faith i.e. with due care and attention. It is submitted that the oral argument of the Plaintiff's counsel that the earlier suit filed in the city civil court was filed on the advice of their advocate is also not substantiated by any pleading or evidence. The Plaintiffs have not filed any affidavit of the**

advocate concerned stating that the city civil court suit was filed under a mistaken belief that the same would be maintainable in the city civil court. The Plaintiffs have not disclosed the name of the advocate who is supposed to have given alleged advice. Relying on the judgment of the Punjab High Court in the case of Bhushan & Ors. Vs. Madan Mohan Lal ,AIR 1973 Punjab & Harayana 269 it is submitted that a mere broad and general plea that the Plaintiff had under legal advice and bonafide belief prosecuted the suit with due diligence is not enough.

10. On behalf of the Plaintiffs it is submitted that though the Plaintiffs have not led oral evidence to prove that the city civil court suit was prosecuted in good faith, they have tendered the documentary evidence to establish that the Plaintiffs are entitled to the benefits of Section 14 of the Limitation Act. According to the Plaintiff, they have produced before this Court compilation of the pleadings in the city civil court. They have produced copies of the important orders passed in the city civil court and they have also produced roznama sheets maintained by the city civil court of the suit filed in the city civil court, as also copies of the

Notice of Motion taken out in the city civil court by Defendant No.8 praying for framing of preliminary issue. According to the Plaintiffs, the above evidence clearly establishes that the previous proceedings were prosecuted with due diligence in the court of first instance, which related to the same matter in issue and was prosecuted in good faith in the court which is unable to entertain it due to want of jurisdiction. It is submitted that though initial burden of establishing ingredients of Section 14 are on the party which claims that benefit, the burden is not heavy one and is surely dischargable. According to the Plaintiffs, by producing the above referred documents the Plaintiffs have discharged the burden. It is submitted that Order VII Rule 6 of the Civil Procedure Code provides that when the suit is instituted after expiry of period mentioned by law, plaint must show the grounds upon which the exemption from such law is claimed. It is submitted that the said clause further provides that court may permit the Plaintiff to claim exemption on any ground not set out in the plaint, if such ground is not inconsistent with the grounds set out in the plaint. The grounds on which the Plaintiffs claim exclusion is that the time during which the Plaintiff was

prosecuting the first suit should be exempted as the Plaintiffs were prosecuting the same with due diligence and the proceedings related to the same matter in issue and was prosecuting in good faith in a court which due to defect of jurisdiction was unable to entertain it. According to the Plaintiff, this has been specifically pleaded in paragraph 31(C) of the plaint. It is further submitted that from the averments made in the plaint and the record it is clear that the suit was bona fide prosecuted in a court, which was subsequently found to have no jurisdiction. It is submitted that it is not the requirement of the law that the Plaintiff should state in the plaint that the earlier suit was instituted in good faith. It is sufficient, if it is stated that it was prosecuted in good faith. According to the Plaintiff, the various documents produced on record which are referred to above show that the Plaintiff was prosecuting the suit in city civil court with due diligence. Relying on the judgment of the Supreme Court in the case of Vijay Kumar Rampal & ors. v/s. Diwan Devi & ors. (AIR 1985 SC 1669) it is submitted that the expression of **"good faith" qualifies prosecuting the proceeding in the Court which ultimately is found to have no**

jurisdiction., which has nothing to do with the institution of the suit. Valuation and Court fees are questions which arise at the institution of the suit. It is submitted that the Supreme Court has specifically held that an error of judgment in valuing and payment of requisite court fee has nothing to do with the question of good faith. The Plaintiffs also rely on the judgment of the Supreme Court in the case of Deena v/s. Bharat Singh, 2002 (6) SCC 336. So far as the judgment of the Supreme **Court in the case of Madhavrao Patwardhan relied on by the Defendants is concerned, it is submitted on behalf of the Plaintiffs that the judgment does not apply to the facts of this case and it distinguishable. It is also submitted that the judgment of the Supreme Court in Madhavrao Patwardhan's case is not an authority for the proposition that prosecuting a suit in good faith includes institution of the suit with due care. It is submitted that in that case the Plaintiffs had knowingly instituted the suit in wrong court and then prosecuted it.**

11. There was some debate whether the present suit is a fresh suit or it is continuation of the suit

filed in the city civil court, because the city civil court had made an order for return of the plaint. After going through the judgments which were relied on by the Plaintiffs to my mind it is clear that even the plaint which is returned by one court having no jurisdiction to entertain the suit is presented in the same condition to the court having the jurisdiction, it amounts to institution of fresh suit and there is no question of continuation of the earlier suit. Therefore, it is absolutely clear that the suit instituted in this court is a fresh suit and therefore, the Plaintiffs would be entitled to claim benefits of provisions of Section 14 of the Limitation Act. Sub-section (1) of Section 14 of the Limitation Act reads as under:-

> **14(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect**

of jurisdiction or other cause of a like nature, is unable to entertain it.

12. Perusal of provisions of Sub-section (1) of Section 14 quoted above shows that the requirement of Section 14 are that the previous legal proceeding (i) must be prosecuted with due diligence in the court of first instance or of appeal or revision; (ii) should relate to the same matter in issue; (iii) should be against the same Defendant; (iv) should be prosecuted in good faith in a court which is unable to entertain it due to want of jurisdiction or other causes of like nature.

13. In so far as the present suit is concerned, I have already held that the matter in issue in two suits is the same. The only question, therefore, that is to be considered is whether the city civil court suit was prosecuted with due diligence and in good faith. Order VII Rule 6 of Civil Procedure Code provides that where a suit is instituted after the period of limitation, the plaint must show the grounds upon which the exemption from such law is claimed. Admittedly, when the present suit was

filed the Plaintiffs did not plead any ground claiming exemption of any period in computing the period of limitation laid down by the law of limitation. As observed above, after the preliminary issue was framed the plaint was amended and alongwith other paragraphs, paragraph 31(c) was introduced. Paragraph 31(c) reads as under:-

> **31C. The Plaintiffs filed a suit in the Hon'ble Bombay City Civil Court being Suit No.6734 of 1994 to challenge the revalidation permission granted to the Defendant 1 to 6 and/or 8 by the Defendant No.7 to carry out construction on the shell of the Divya Prabha structure or claim any additional F.S.I. available in respect of the said property. The Plaintiffs submit that while the abovementioned Suit was pending for hearing and final disposal the Bombay Municipal Corporation revalidated the Commencement Certificate and IOD of the building "Divya Prabha" on 28-6-1996 and have thereafter once again revalidated the same on 5-10-1998. It is submitted that each revalidation of the Commencement Certificate and IOD creates a fresh cause of action in favour of the Plaintiffs. Without prejudice and in the alternative to what is stated hereinabove, it is submitted that several applications for interim reliefs were made by the plaintiffs in the said Suit No.6734 of 1994 and the Hon'ble City Civil Court was pleased to grant interim reliefs to the Plaintiffs. The said suit was prosecuted with due diligence and in good faith by the Plaintiffs. All the Defendants therein are also the Defendants in the present suit. The matters in issue in both suits are the same. Defendants No.1 and 2 took out Notice of Motion on 16th March 1999 and raised the preliminary issue of**

> **jurisdiction of the Hon'ble City Civil Court to try and entertain the suit. The Hon'ble City Civil Court was pleased to pass an Order dated 16th/17th March 1999 for return of the plaint on the ground that the Hon'ble City Civil Court had no jurisdiction to entertain the same. The Plaintiffs filed an appeal against the said Order dated 16th/17th March 1999. The Plaintiffs withdrew their Appeal on 5th May, 1999. On 18th May 1999 the Plaintiffs filed the present suit in this Hon'ble Court. In the abovementioned circumstances it is submitted that even if April 1994 is to be taken as the date when the Plaintiffs cause of action to file a suit against the Defendants arose the time spent in prosecuting Suit No.6734 of 1994 in the Hon'ble City Civil Court i.e. from 8th November 1994 to 16th/17th March 1999 is required to be excluded and the present suit is accordingly filed within the period of limitation.**

14. It is clear from paragraph 31(C) quoted above that the Plaintiffs claim exclusion of period spent in prosecuting the suit in city civil court on the ground that the said suit was prosecuted with due diligence and in good faith. At the hearing exclusion of time on any ground other than the one mentioned in paragraph 31(C) was not claimed. Therefore, in the present case proviso to Rule 6 of Order VII does not come into play. Therefore, I have to see whether the Plaintiffs are entitled to claim exclusion of time on the ground which is pleaded in paragraph 31(C). Perusal of paragraph

31(C) shows that in that paragraph the Plaintiffs do not claim that the suit in the city civil court was instituted in good faith, however, it is claimed that the Plaintiff prosecuted the suit in the city civil court with due diligence. This averment may amount to the Plaintiffs claiming that they instituted and prosecuted the suit in city civil court with due diligence and in good faith. But making averments in the plaint would not be enough. The Plaintiffs will have to lead evidence to establish that the suit in the city civil court was instituted with due care and attention. The roznama of the suit maintained by the city civil court may show that the Plaintiffs prosecuted the suit with due diligence. But it will not show that the suit was instituted with due diligence and due care. So far as the contention of the Plaintiffs that for the purpose of claiming benefits of Section 14 of the Limitation Act, it is not necessary for the Plaintiffs to show that the suit was instituted with due care and attention, is concerned, in my opinion, in view of the judgment of the Supreme Court in the case of Madhavrao Patawardhan referred to above and the provisions of Section 14 of the Limitation Act read with Section 2(h) , leaves one in no manner of

doubt that the Plaintiffs will have to lead evidence to show that the earlier suit was instituted with due care and attention. Perusal of the provisions of Section 14 shows that the Plaintiff has to establish that he was prosecuting the earlier civil proceedings in good faith. When one says that I was prosecuting the proceedings in good faith, it implies that he also claims that he instituted the proceedings in that court in good faith. Therefore for claiming the benefits of the provisions of Section 14, the Plaintiffs have to establish by leading evidence that firstly the proceedings were instituted by them in good faith and thereafter were being prosecuted in good faith. The term "good faith" is defined by section 2(h). Section 2(h) reads as under:-

> **2(h) "good faith"- nothing shall be deemed to be done in good faith which is not done with due care and attention;**

15. Therefore, in order to establish that the

Plaintiffs instituted the suit in city civil court in good faith, the Plaintiffs will have to establish by leading evidence that they instituted the suit in City Civil Court after due care and paying due attention. The contention raised on behalf of the Plaintiffs that for the purpose of claiming benefits of Section 14 of the Limitation Act, all that the Plaintiffs have to show that they were prosecuting the proceedings in good faith and it is not necessary for the Plaintiffs to show that they had instituted the proceedings in good faith, in my opinion, has no substance. Because for claiming that the Plaintiffs were prosecuting the proceedings in good faith, they have to first show that they instituted the proceedings in good faith. Because, if the institution of the proceedings is not in good faith, there cannot be prosecution of those proceedings in good faith. It is now not in dispute that the Plaintiffs had not valued the suit properly in the city civil court. Therefore, in order to establish that they were prosecuting the suit in city civil court with due diligence, the Plaintiffs have to establish that it was not possible for them while the suit remained pending in the city civil court to discover and find out that they have

wrongly valued the suit any time before the defect was pointed out to them. In other words, in order to claim that they were prosecuting the suit in the city civil court in good faith the Plaintiffs will have to show not only that while instituting the suit they had taken due care and paid due attention, but even after due diligence it was not possible for them to discover the mistake committed by them in valuing the suit any time before the defect was pointed out to them. The Supreme Court has in detail considered this aspect of the matter in its judgment in the case of Madhavrao Patwardhan referred to above. In my opinion, paragraphs 7 & 8 of that judgment are relevant. They read as under:-

> **7. The conclusion of the learned trial judge on this part of the case, is in these words:-**
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> **"The plaintiff's mala fides are therefore not established and the period occupied in prosecuting the former suit must be excluded under section 14 of the Limitation Act."**
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> **The observations of the High Court are as follows:**
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> **"We do not see our way to accuse the plaintiff of want of good faith or any mala fides in the matter of the filing of the suit in the Subordinate Judge's Court at Miraj. There is nothing on the record to show that he was really guilty of want of good faith or non-prosecution of the suit**

with due diligence in the Court of the Subordinate Judge at Miraj."

Both the courts below have viewed the controversy under S.14 of the Limitation Act, as if it was for the defendant to show mala fides on the part of the plaintiff when he instituted the previous suit and was carrying on the proceedings in that court. In our, opinion, both the courts below have misdirected themselves on this question. Though they do not say so in terms, they appear to have applied the definition of "good faith" as contained in the General Clauses Act, to the effect that "A thing shall be deemed to be done in good faith where it is in fact done honestly, whether it is done negligently or not." But the Indian Limitation Act contains its own definition of good faith to the effect that "nothing shall be deemed to be done in good faith which is not done with due care and attention"- (S.2(7)). We have, therefore, to see if the institution and prosecution of the suit in the Munsiff's court at Miraj was done with due care and attention. We know that the plaint in the Tikoni suit filed by the same plaintiff in the same court, did contain a statement as to the value of the subject-matter, but it was conspicuous by its absence in the plaint in the suit as originally filed in the Munsiff's court at Miraj. All the facts alleged in the plaintiff's petition for the return of the plaint, were known to the plaintiff ever since the institution of the suit. Nothing fresh was discovered in 1940. On the other hand, we know definitely that the Tikoni suit had been dismissed by the trial court on merits. The suits were of an analogous character in the sense that the controversy was similar in both of them. The appellants' contention that on the dismissal of the plaintiff's Tikoni suit in November, 1939, he, naturally, became apprehensive about the result of the other suit, and then moved the court for the return of the plaint on the ground of pecuniary

jurisdiction, appears to be well-founded. The plaintiff knew all the time that the value of the properties involved in the suit, was much more than Rs.5,000 which was the limit of the pecuniary jurisdiction of the Subordinate Judge's court. Can an omission in the plaint to mention the value of the properties involved in the suit, be brought within the condition of 'due care and attention' according to the meaning of "good faith" as understood in the Limitation Act? It has to be remembered that it is not one of those cases which usually arise upon a revision of the valuation as given in the plaint, on an objection raised by the defendant contesting the jurisdiction of the court to entertain the suit. Curiously enough the defendant had not raised any objection in his written statement to the jurisdiction of the court to entertain the suit. Apparently, the plaintiff was hard put to it to discover reasons for having the case transferred to another court. The question is not whether the plaintiff did it dishonestly or that his acts or omission in this connection, were mala fide. On the other hand, the question is whether, given due care and attention, the plaintiff could have discovered the omission without having to wait for about 10 years or more. The trial court examined the plaintiff's allegation that the omission was due to his pleader's mistake. As that court observed "he makes this contention with a view to shield himself behind a wrong legal advice." That court has answered the plaintiff's contention against him by observing that the plaintiff was not guided by any legal advice in this suit; that the plaint was entirely written by him in both the suits, and that he himself conducted those suits in the trial court "in a manner worthy of a senior counsel." The court, therefore, rightly came to the conclusion that the plaintiff himself was reaponsible for drafting the plaint and for presenting it in court, and that no pleader had any responsibility in the matter. No reason

was adduced why, in these circumstances, the value of the subject-matter of the suit, was mentioned in the plaint in the Tikoni suit but not in the plaint in respect of the present suit.

8. There is another serious difficulty in the way of the plaintiff. He has not brought on the record of this case any evidence to show that he was prosecuting the previously instituted suit with "due diligence" as required by S.14. He has not adduced in evidence the order-sheet or some equivalent evidence of the proceedings in the Sub-Judge's court at Miraj, to show that in spite of his due diligence, the suit remained pending for over ten years in that court, before he thought of having the suit tried by a court of higher pecuniary jurisdiction. In our opinion, therefore, all the conditions necessary to bring the case within S.14 have not been satisfied by the plaintiff. There could be no doubt about the legal position that the burden lay on the plaintiff to satisfy those conditions in order that he may entitle himself to the deduction of all that period between 31st January 1929, and 4th July 1940. It is also clear that the courts below were in error in expecting the contesting defendant to adduce evidence to the contrary. When the plaintiff has not satisfied the initial burden which lay upon him to bring his case within S.14, the burden would not shift, if it ever shifted, to the defendant to show the contrary. In view of this conclusion, it is not necessary for us to pronounce upon the other contention raised on behalf of the appellants that, even after giving the benefit of S.14, the suit is still barred under Art.142 of the Limitation Act. This is a serious question which may have to be determined if and when it becomes necessary.

16. It is to be noted here that perusal of the

provisions of Order VII Rule 1 shows that it is the requirement of the law that the plaint should contain a statement of the value of the subject matter of the suit for the purpose of jurisdiction and court fee, showing the provisions of law under which the valuation of court fees and jurisdiction is separately made. Thus, Order VI Rule 1 requires the Plaintiff to pay attention to the law governing the valuation of the suit for the purpose of court fees while drafting the plaint. Therefore, in order to claim that the suit was instituted with due care and attention, the Plaintiff will have to show that while instituting the suit the Plaintiff had committed a mistake in valuing the suit, despite taking due care and paying due attention. In the present case, the Plaintiffs have not cared to lead any evidence to show that the city civil court suit was instituted with due care and attention. The contention of the Plaintiffs relying on the judgment of the Supreme Court in the case of Vijay Kumar Rampal & Ors v/s. Diwan Devi & Ors. AIR 1985 SC 1669, that an error in judgment in valuing the suit in a court which is ultimately found to have no jurisdiction, has nothing to do with the question of jurisdiction in prosecuting the suit cannot be

accepted. In view of the clear judgment of the Supreme Court in the case of Madhavrao Patwardhan, if an error in valuing the suit is a bonafide error, obviously, institution of the suit would be in good faith. But for that the Plaintiffs will have to lead evidence to show that the error in valuing the suit was a bonafide error. In the present case, I find that the conduct of the Plaintiffs shows that the Plaintiffs do not deserve any leniency from the Court. Though the Plaintiffs needed benefit of Section 14 of the of the Limitation Act to bring his suit within limitation there were no pleadings found in the plaint. Even after reply was filed in the Notice of Motion and an objection was raised that the suit is barred by the law of limitation, still no attempt was made to amend the plaint. Application for amendment in the plaint was made not only after the preliminary issue was framed, but after the court started hearing the parties on the preliminary issue. Ultimately, the court granted the amendments. But even in the amended plaint, though claim was made that the city civil court suit was prosecuted in good faith, no particulars were given. Though, in my opinion, it was necessary for the Plaintiffs to disclose particulars of the due

care and due attention. The Defendants deny that the proceedings in the city civil court were prosecuted with due diligence, therefore, the burden was on the Plaintiff to lead the evidence to show that the suit was prosecuted with due diligence. But the Plaintiffs did not even make an attempt to lead any oral evidence.

17. Taking overall view of the matter, therefore, it is clear that the Plaintiffs have not been able to establish that the Plaintiffs are entitled to claim benefits of Section 14 of the Limitation Act. I have already observed above that the matter in issue in both the suits is the same. It is the case of the Plaintiffs also that the matter in issue in both suits is the same and therefore obviously the cause of action for instituting the present suit arose in 1994 and as the Plaintiffs are not entitled to claim benefits of Section 14 of the Limitation Act, the suit is barred by the law of Limitation. Issue No.1 is , therefore, answered accordingly. As I have found that the suit as framed and filed is barred by the law of limitation, the suit is dismissed with no order as to costs. As the suit is dismissed, Notice of Motion does not survive for

consideration. Hence, disposed of.

. At the request of the learned Counsel appearing for the Plaintiffs, it is directed that despite disposal of the Notice of Motion, ad-interim order passed in this Notice of Motion which is presently operating shall continue to operate for a period of four weeks from today.

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